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July 14, 2015

VIA ECF

Hon. Andrew J. Peck, U.S.M.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: Rio Tinto plc v. Vale S.A., et al., Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We write on behalf of Defendant Vale S.A. (“Vale”) in response to Plaintiff Rio Tinto’s letter to the Court reiterating its request for an order compelling Vale to produce the Nardello Report. (Dk. 298.) Vale’s position remains that the Report is privileged and that, in any event, Rio Tinto’s motion is premature before any decision that the Amended Complaint states a claim or any answer that would put privileged information at issue (Dk. 264.)

Indeed, Rio Tinto’s letter highlights the pretextual nature of its request and the wisdom of a decision to defer ruling. Rio Tinto now claims to be seeking not just production of the Nardello Report, but instead an at-issue waiver with respect purportedly to Vale’s *entire* due diligence related to the transaction. (Dk. 298; *see also* Dk. 256 at 6.) Not only has Vale never put its own due diligence at issue by raising it as a defense in any of its pleadings, but there is also no need for the Court to get into the morass of at-issue waiver and extraordinary prejudice to doing so before there has been any determination that Rio Tinto has stated a claim or any determination by Vale with respect to the hypothetical question (affected by the scope of any ruling) whether – if Rio Tinto did state a claim – it would rely on such information as a defense. It is relevant in this respect that the Second Circuit has highlighted that the attorney-client privilege plays a “critical role in our judicial system.” *See United States v. Richard Roe, Inc. (In re Richard Roe, Inc.)*, 168 F. 3d 69, 71 (2d Cir. 1999).

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If the Court were nonetheless to find a waiver with respect to the Nardello Report, which it should not, Vale respectfully requests that compliance with any such order be stayed during the pendency of any appeal of such order to Judge Berman.

Respectfully submitted,

/s/ Lewis J. Liman
Lewis J. Liman

cc: All counsel of record (via ECF)